

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Kara Hughes	Team: Team # 4	CCRB Case #: 200305827	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Saturday, 07/26/2003 2:30 AM	Location of Incident: Corner of 3rd Avenue and 33rd Street, Manhattan	Precinct: 17	18 Mo. SOL 1/26/2005	EO SOL 1/26/2005	
Date/Time CV Reported Tue, 07/29/2003 6:00 PM	CV Reported At: CCRB	How CV Reported: In-person	Date/Time Received at CCRB Tue, 07/29/2003 6:00 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Dennis Morgano	11589	893417	MTS PCT
2. POM Joseph Bonner	24686	915329	MTS PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Robinson Vega	28505	899947	PBMS TF
2. POM Mark Grogan	02925	919134	MTS PCT
3. SGT John Oconnor	01686	906963	MTS PCT
4. POM Steven Beatty	30491	924930	MTS PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Joseph Bonner	Force: Police Officer Joseph Bonner used physical force against § 87(2)(b)	
B.POM Dennis Morgano	Force: Police Officer Dennis Morgano used physical force against § 87(2)(b)	
C.POM Joseph Bonner	Force: Police Officer Joseph Bonner tightly handcuffed § 87(2)(b)	
D.POM Dennis Morgano	Force: Police Officer Dennis Morgano used physical force against § 87(2)(b)	

## Synopsis

At 2:30 AM on July 26, 2003, § 87(2)(b) and § 87(2)(b) were arrested by Midtown South Precinct Officer Dennis Morgano after a witness identified them as having destroyed a glass storefront window; § 87(2)(b) was later arrested and charged with § 87(2)(b).

§ 87(2)(b) PO Morgano and his partner, PO Joseph Bonner, acknowledged that force was used in affecting the arrests, § 87(2)(b) § 87(2)(b) filed complaints with the CCRB and IAB alleging that officers used excessive force in effecting his arrest (*allegations a, b*) and that his handcuffs were too tight (*allegation c*). § 87(2)(g)

§ 87(2)(g)

### Summary of Complaint

Prior to appearing at the CCRB on July 29, 2003 to file a complaint and be interviewed, § 87(2)(b) filed a complaint with IAB reporting that his wrists sustained injuries due to officers' use of excessive physical force while affecting his arrest. § 87(2)(b)'s complaint was investigated internally at the Midtown South Precinct, and will be discussed later in this report.

§ 87(2)(b)'s first statements regarding this incident were recorded by the medical staff at § 87(2)(b), where he sought treatment on § 87(2)(b). § 87(2)(b) stated that he was "handcuffed on Friday night and alleges that the police were very tough with him and he was lifted with cuffs" (*enc. 23e*). On § 87(2)(b), § 87(2)(b) sought treatment from an orthopedic surgeon, § 87(2)(b), who prepared a letter regarding his diagnosis. § 87(2)(b) notes § 87(2)(b)'s complaint that his "handcuffs were on exquisitely tight despite him asking them (*the police*) to loosen them and this was not done" (*enc. 23q*).

On July 29, 2003, § 87(2)(b) § 87(2)(b) appeared at the CCRB to file a complaint regarding the circumstances surrounding his July 26, 2003 arrest. § 87(2)(b) explained that he was arrested at approximately 2:30 AM on Saturday July 26, having exited Manhattan's "Mercury Bar," located on 3<sup>rd</sup> Avenue between 34<sup>th</sup> and 33<sup>rd</sup> Streets (*see photographs, enc. 26c*). § 87(2)(b) was with friends § 87(2)(b) and § 87(2)(b) and estimated that they had been inside the bar for approximately an hour during which he and his friends had had one (hard alcohol) drink apiece: none of them were intoxicated. After exiting the bar, a homeless man asked the group to buy a newspaper from him. Immediately after § 87(2)(b) gave the man a dollar, two uniformed officers exited a marked police car and asked what the group had received from the man. § 87(2)(b) stated that he was then "bum rushed" by the two officers, whom he later identified after reading their nameplates: PO Dennis Morgano and PO Joseph Bonner, both assigned to the Midtown South Precinct.

The officers “pushed” § 87(2)(b) backward by his chest so that his back was against the wall near a pizzeria (*The Brick Oven Pizza 33, see photographs, enc. 26c*). § 87(2)(b) was handcuffed “right away,” prompting him to question why he was being handcuffed and whether he was arrested: § 87(2)(b) also stated that § 87(2)(b). § 87(2)(b) felt that his handcuffs were “very tight” – as such, he began asking the officers to loosen the cuffs. He stated that he continued to ask that the cuffs be loosened throughout his interaction with the officers. Soon after § 87(2)(b) was handcuffed, § 87(2)(b) was also handcuffed. § 87(2)(b) was unable to comment as to why the officers had arrested his friend and stated that he did not observe the manner in which the arrest was affected. § 87(2)(b) s third friend, § 87(2)(b) was not arrested and instead “left [the location] and went home.”

Once he was handcuffed, PO Bonner escorted § 87(2)(b) towards a marked patrol car that was parked nearby. At this time, a bar patron whom § 87(2)(b) did not know (*identified by this investigation as* § 87(2)(b) attempted to intervene, stating that § 87(2)(b) and § 87(2)(b) “didn’t do anything” and that the officers should “stop using so much force.” As PO Morgano began to deal with § 87(2)(b) PO Bonner walked § 87(2)(b) towards the marked car. § 87(2)(b) described: “he picked me up by the back of the cuffs and threw me onto the trunk (of the car).” PO Bonner remained with § 87(2)(b) and § 87(2)(b) (who was also walked to the vehicle) near the car, during which he was “violently pulling up and twisting” their handcuffs.

During the time PO Morgano was effecting § 87(2)(b) s arrest, a process that involved “tackling” § 87(2)(b) additional uniformed officers had arrived at the location. PO Bonner walked § 87(2)(b) across 3<sup>rd</sup> Avenue and placed him inside of a separate marked police car. § 87(2)(b) stated that he was made to wait in the car for approximately ten to fifteen minutes after which two uniformed male officers (*White males, no further description could be provided*) drove him to the Midtown South Precinct’s stationhouse. During the ride, § 87(2)(b) continued to ask why he was being arrested and also continued to complain about how tight his handcuffs were. The passenger of the car was responsible for presenting § 87(2)(b) at the front desk upon their arrival at the stationhouse; it was at this time – approximately thirty to forty five minutes after being placed into handcuffs – that the (passenger) officer loosened § 87(2)(b) s handcuffs.

§ 87(2)(b) and § 87(2)(b) were all lodged in separate holding cells. When he was placed into the cell, § 87(2)(b) s handcuffs were removed. After requesting numerous times, § 87(2)(b) was told that he was being arrested for § 87(2)(b) § 87(2)(b) was permitted to call his father, to whom he reported that his wrists hurt. § 87(2)(b) also told the (unidentified) officers who transported him to Central Booking that his wrists hurt; when medical attention was offered, § 87(2)(b) declined because he “knew if [he] went to the hospital that [he] wouldn’t get out [of custody].” § 87(2)(b) pled not-guilty to his charges. He sought medical treatment for his wrists on § 87(2)(b). At the time of his interview, § 87(2)(b) stated that he could not feel the area between his middle-knuckle joints and his base-knuckle joints and could not feel his ring finger knuckle, his pinkie finger and the outside portion of his palm. He also sustained a bruise on the inside portion of his left biceps (*see photographs, enc. 26d-e*).

### **Results of Investigation**

§ 87(2)(b) spent the evening of July 26, 2003 with § 87(2)(b) and § 87(2)(b) both of whom were interviewed by the CCRB. While § 87(2)(b) and his friends did not know § 87(2)(b) at the time of the incident, § 87(2)(b) s legal counsel, § 87(2)(b) assisted in identifying him and since forth has accepted him as a client. § 87(2)(b) was also interviewed regarding this incident during which he alleged that officers used excessive physical force in effecting his arrest.

#### *Additional civilian interviews*

§ 87(2)(b) § 87(2)(b) stated that there were approximately forty people standing outside of “Mercury Bar” when he, § 87(2)(b) and § 87(2)(b) exited the bar slightly after 2:00 AM. Having stood on 3<sup>rd</sup> Avenue for approximately two minutes, § 87(2)(b) observed two marked police cars stop and park in

front of the “Mercury Bar.” Two officers approached; § 87(2)(b) recalled one of the officers inquiring about their interaction with the homeless man (to whom § 87(2)(b) had given a dollar). The “tall officer” (PO Bonner) “went right after” § 87(2)(b) without providing him any verbal command. § 87(2)(b) responded to the officers’ approach by raising both of his hands and asking, “what’s going on?” PO Bonner did not respond and instead “twirled” § 87(2)(b) around and handcuffed him.

At this time § 87(2)(b) approached § 87(2)(b) and began asking the officers what was happening. “The officer with the tattoo (PO Morgano) came up behind” § 87(2)(b) and placed him into handcuffs. Like § 87(2)(b) § 87(2)(b) began to ask why he was being handcuffed. PO Morgano handed § 87(2)(b) to PO Bonner, who was attending to § 87(2)(b) § 87(2)(b) recalled that PO Bonner was holding both he and § 87(2)(b) “real tight [by the handcuffs], not letting us move.” § 87(2)(b) recalled how he was “on [his] tippy-toes, because [PO Bonner] was pulling so hard” prompting him to say to the officer, “relax – we’re not going anywhere.” PO Bonner remarked, “that’s right, you’re not going anywhere!” Both § 87(2)(b) and § 87(2)(b) were articulating their pain by exclaiming “Ow!” – PO Bonner then “slammed” them onto the trunk of a nearby car.

During this time, a bar patron § 87(2)(b) “came out [of the bar] and [said], ‘I’m § 87(2)(b). I’m a witness – you can’t do this.’” § 87(2)(b) recalled their being “a lot of shouting,” and stated that one of the officers questioned § 87(2)(b) “you’re § 87(2)(b)? – no you’re not – show your ID.” § 87(2)(b) described that § 87(2)(b) “had his hands up” but was not menacing the officers. PO Morgano then “tackled” and handcuffed § 87(2)(b).

§ 87(2)(b) and § 87(2)(b) were transported to the Midtown South Precinct stationhouse separately and they were lodged in separate holding cells. During the time when they were transported to Central Booking, § 87(2)(b) saw that § 87(2)(b)’s wrists were “swollen to the size of his forearms” – § 87(2)(b) complained of his wrists and fingers feeling “numb.”

§ 87(2)(b) § 87(2)(b) was not arrested on July 26, 2003 although he was standing alongside § 87(2)(b) and § 87(2)(b) when they were placed into handcuffs. He recalled that initially there were two uniformed officers and one officer in plainclothes at the arrest location. § 87(2)(b) testified one of the uniformed officers handcuffed § 87(2)(b) and then walked him to a marked police car parked on 3<sup>rd</sup> Avenue, placing him against the car such that § 87(2)(b)’s chest was “leaning against the trunk of the car.” § 87(2)(b) was handcuffed after he approached the officers and inquired why § 87(2)(b) was being arrested. § 87(2)(b) recalled that “once § 87(2)(b) was placed in handcuffs, [he] decided that it was better not to say anything [to the officers].”

An Asian male § 87(2)(b) whom § 87(2)(b) did not know then approached him and asked, “are these your friends?” When § 87(2)(b) indicated that they were, § 87(2)(b) said, “don’t worry, I’ll try to help them out” as he approached the officers. § 87(2)(b) testified: § 87(2)(b) said to me something to the effect that he works for the police department...as far as what § 87(2)(b) told the officers, I don’t know.” § 87(2)(b) stated that § 87(2)(b) was “tackled by two or three officers, placed face-down in the road, and put in handcuffs.”

After a brief but undetermined amount of time, § 87(2)(b) and § 87(2)(b) were individually escorted north on 3<sup>rd</sup> Avenue. § 87(2)(b) stated that he did not overhear § 87(2)(b) making any mention of his handcuffs being too tight.

§ 87(2)(b) § 87(2)(b) § 87(2)(b)’s attorney, notified this investigator that his client would contact her to arrange an interview in connection with the investigation initiated by § 87(2)(b). Instead, § 87(2)(b) appeared at the CCRB and denied any affiliation with an ongoing CCRB investigation. Investigator Avi Springer interviewed § 87(2)(b) on October 24, 2003, and later told this investigator that § 87(2)(b) was reading from unidentified paperwork throughout his interview. Despite Inv. Springer’s insistence, § 87(2)(b) prohibited him from personally reading or examining said paperwork – as such, no photocopies of the papers can be attached to this transcription. As can be heard on the audio-tape of his interview, § 87(2)(b) reads nearly verbatim throughout his interview, rustling his papers throughout. § 87(2)(g)

§ 87(2)(b) is a § 87(2)(b). He testified that on the date of incident, he had consumed “a few beers” but that he was not intoxicated. He recalled observing two uniformed officers

exited a marked police car with a female on 3<sup>rd</sup> Avenue in front of the Mercury Bar. After the female “pointed” to two males (*whom* § 87(2)(b) later learned to be § 87(2)(b) and § 87(2)(b) the officers approached the males and handcuffed them. § 87(2)(b) did not hear the officers provide any “direct command” and described § 87(2)(b) and § 87(2)(b) as “very confused” – § 87(2)(b) was more vocal about his confusion. § 87(2)(b) testified using Officers Bonner and Morgano’s name but was unable to explain how he obtained this information. He stated that PO Bonner was “using excessive force by pulling and twisting § 87(2)(b) s] arm, to place [it] behind his back and force the handcuff on § 87(2)(b) s] wrist.” § 87(2)(b) stated that he did not see the manner in which § 87(2)(b) was handcuffed. He stated that neither § 87(2)(b) nor § 87(2)(b) was offering resistance.

§ 87(2)(b) recalled that, because he had seen § 87(2)(b) and § 87(2)(b) inside the “Mercury Bar” “doing nothing wrong, [he] approached [PO Bonner] from approximately ten feet or so [away] on the sidewalk and courteously identified [him]self as a § 87(2)(b) § 87(2)(g)

§ 87(2)(b) stated that “at no time was [he] placing [him]self between the two gentleman and the police officers.” PO Bonner told § 87(2)(b) to “mind [his] own business and leave” and § 87(2)(b) remained in the area. When PO Bonner told § 87(2)(b) to leave the area for a second time, § 87(2)(b) complied. During this time § 87(2)(b) asserted that he observed PO Bonner “lift” § 87(2)(b) “up by the handcuffs and then slam him against the trunk of the police car.” § 87(2)(b) described that § 87(2)(b) was lifted completely off the ground. He detailed, § 87(2)(b) wasn’t as big as the officer... § 87(2)(b) is a smaller guy, and slim, maybe about 5’8.” Bonner, the officer, basically overpowered him.” § 87(2)(b) described that PO Bonner lifted up on § 87(2)(b) s handcuffs with two hands.

After he walked away four-to-five steps, § 87(2)(b) stated that he was “tackled” when PO Morgano “ran at § 87(2)(b) by throwing his whole body into § 87(2)(b) and gripping his arms, against [his] body.” § 87(2)(b) described that he was attempting to bring his arms around front of him, to brace himself from the fall. § 87(2)(b) received injury to his right forehead, his “eyes” and both of his elbows: his skin was “cut” but not bleeding. § 87(2)(b) continued to attempt to bring his arms in front of him. PO Morgano “forced” § 87(2)(b) s hands behind his back “rapidly” and handcuffed him. After this, PO Morgano “rapidly” picked § 87(2)(b) up from the ground and “rapidly” placed him into an RMP.

§ 87(2)(b) did not recall any additional officers responding to the location but did confirm that he was not transported to the Midtown South Precinct with either § 87(2)(b) or § 87(2)(b). Once at the stationhouse, § 87(2)(b) did not request medical attention. § 87(2)(b) stated that he was unaware if either § 87(2)(b) or § 87(2)(b) had filed CCRB complaints regarding the incident. § 87(2)(b) was charged with § 87(2)(b). He sought medical attention on § 87(2)(b) days after his release.

#### *Canvass and attempts to identify additional civilian witnesses*

On July 30, 2003, a canvass was conducted on the 3<sup>rd</sup> Avenue area surrounding the “Mercury Bar” and photographs of the area were taken (*enc. 26a-c*). Letters were left for the day-side bar Manager (“§ 87(2)(b) to give to employees working during evening hours requesting that any possible witnesses contact the CCRB regarding the incident three days prior. Similar letters were also given to the management staff at the pizzeria located next to the bar (*please see a sample copy of the letter, enc. 26b*). Through additional telephone conversations with § 87(2)(b) it was established that the bar uses bouncers hired by a private security company: as of August 8, 2003, the bouncer working during the morning of July 26, 2003 had been fired and could not be contacted. § 87(2)(b) also stated that none of her bar employees witnessed the event (*see IA’s, enc. 28a-b*). § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

#### *Medical records*

§ 87(2)(b)

§ 87(2)(b) sought medical attention on the evening of § 87(2)(b) regarding the injuries he sustained on his wrists. Records indicate that at this time § 87(2)(b) s chief complaint was that the

“police department (*caused*) injury to both lower arms and hands” (*enc. 23g*). Treatment at the § 87(2)(b) notes, “he was in handcuffs last eve[ning] and PO lifted him up by them.” No fractures were found. § 87(2)(b) the orthopedic surgeon who examined § 87(2)(b) on § 87(2)(b), determined that § 87(2)(b) s “left wrist is swollen [with] decreased sensation in the radial sensory nerve distribution” and that his “right wrist has slight swelling and abrasion.” During a follow-up consultation on § 87(2)(b), § 87(2)(b) found that § 87(2)(b) s swelling and wrist motion had improved. The doctor stated that as § 87(2)(b) continued to complain of injury, “he may require some (*physical*) therapy” (*enc. 23s*).

§ 87(2)(b) received medical attention on § 87(2)(b) at § 87(2)(b). § 87(2)(b) complained that he had been “pushed to the ground” although there is no mention that it was an NYPD officer who injured him. § 87(2)(b) was found to have suffered “contusions on [his] face and both elbows” (*enc. 24a-b*).

#### *Officer identification*

At the time of his CCRB interview, § 87(2)(b) was able to identify both Officers Bonner and Morgano by name, having read their nameplates during the incident. § 87(2)(b) also stated that he was able to easily differentiate between the officers as PO Bonner is markedly taller than PO Morgano, and PO Morgano has a large tattoo spanning the length of his left forearm. § 87(2)(b) was unable to describe the additional officers who responded to the location with any specificity.

#### *Communications records*

Communications records reflect that Officers Morgano and Bonner, working Midtown South’s sectors “a, b” effected three arrests at 2:43 AM on July 26, 2003. Two additional units also arrived at the location; based on the statements obtained from Officers Morgano and Bonner, it was determined that Officers Mark Grogan and Steven Beatty responded to the location. Sgt. John O’Connor was interviewed, as communications records indicate that he was acting as the precinct’s patrol supervisor at the time of incident.

#### *Police Officer Joseph Bonner*

PO Joseph Bonner was in uniform and active between 11:15 PM (*on July 25, 2003*) and 7:15 AM (*on July 26, 2003*) alongside PO Dennis Morgano patrolling Midtown South sectors “a, b.” At approximately 2:20 AM the officers responded to 34<sup>th</sup> Street and Park Avenue and spoke with a female 911 caller reported watching two White males who “appeared intoxicated” break a “Duane Reade” storefront window. The female agreed to canvass the area with the officers; on 3<sup>rd</sup> Avenue, the female identified two males § 87(2)(b) and § 87(2)(b). Officers’ Bonner and Morgano exited their vehicle to engage the males in “investigatory” conversation while the female remained in their vehicle. PO Bonner testified that had § 87(2)(b) “immediately offered an explanation” concerning his whereabouts, he would have “taken investigatory steps to confirm or deny § 87(2)(b) s statement.” When the officers approached § 87(2)(b) (the “bigger” of the two individuals), PO Morgano queried “where [he] was coming from.” § 87(2)(b) began to walk backwards with “raised hands [held] in a combative position” in front of his chest. Once § 87(2)(b) “squared-off,” PO Bonner “side-stepped and came around the back of § 87(2)(b) grab[bing] and cuffing his left wrist.” PO Morgano then grabbed § 87(2)(b) s right wrist and the partners fully handcuffed him.

§ 87(2)(b) began shouting, “what are you doing? What the fuck’s going on?” PO Bonner stated that § 87(2)(b) was “under arrest and [should] stop resisting.” § 87(2)(b) “still tried to pull away” from the officers and continued to scream. Notably, § 87(2)(b) asserted, “you don’t know what you’re doing – your career is over – I know these big bosses on the job.” While § 87(2)(b) stated, “take the cuffs off of me!” he did not request that the handcuffs be loosened. PO Bonner remained alongside § 87(2)(b) while PO Morgano approached and handcuffed § 87(2)(b). PO Bonner stated that he held § 87(2)(b) on the arm; the officer denied holding him by the handcuffs and likewise denied twisting § 87(2)(b) s handcuffs. He also offered that he does not hold onto the chain that links the two handcuffs together because one’s fingers can so easily be pinched if a prisoner is resistant.

During this time, “an Asian guy § 87(2)(b) approach[ed]” PO Bonner and § 87(2)(b) who were standing near 3<sup>rd</sup> Avenue. § 87(2)(b) stated, “what are you doing? You can’t arrest him – this is an illegal arrest. I’m a police officer.” PO Bonner recalled, § 87(2)(b) came up right directly at me...he

might try to grab § 87(2)(b) away from me. I says [to § 87(2)(b)] ‘stand back’ and I push him on the chest, push him backwards. I says, ‘the guy’s under arrest, it’s none of your business. Get away from us right now.’” § 87(2)(b) did not fall as a result of PO Bonner’s push. § 87(2)(b) approached a second time to which PO Bonner told him to “stand back.” § 87(2)(b) said to § 87(2)(b) “listen, if you’re a police officer, I need your identification, I need to know where you work.” § 87(2)(b) did not respond, prompting PO Bonner to believe that § 87(2)(b) was not a police officer.

While holding § 87(2)(b) with his right hand, PO Bonner attempted to call for a non-emergency backup using his radio. PO Morgano brought § 87(2)(b) (handcuffed) to PO Bonner and declared, “I’m going to get § 87(2)(b) now...hold onto these two guys.” PO Bonner positioned § 87(2)(b) and § 87(2)(b) “back-to-back” and reached his own arm through their crooked arms and grabbed his arms together, “locking” § 87(2)(b) and § 87(2)(b) back-to-back. Regarding whether § 87(2)(b) was complaining about his handcuffs at this time, PO Bonner testified: “I don’t really remember him saying something about the handcuffs were too tight. I remember him saying something about ‘oh, take the handcuffs off’ to me – like he meant that he shouldn’t be arrested.”

PO Bonner observed PO Morgano “going after § 87(2)(b). He goes to grab him and cuff him and that guy starts to trying to move away from him and [he] starts fighting with him. I see them fall to the ground.” PO Bonner did not assist PO Morgano and instead remained with § 87(2)(b) and § 87(2)(b) awaiting the arrival of back-up units. Once back-up arrived, each of the three prisoners were loaded into separate RMPs. PO Bonner recalled receiving assistance from PO Mark Grogan when loading § 87(2)(b) into a vehicle, as § 87(2)(b) refused to climb into the car. PO Bonner explained that he grabbed § 87(2)(b)’s right leg and “push” his head into the car while PO Mark Grogan “grabb[ed]” § 87(2)(b) from the opposite side of the RMP. PO did not remember what, if anything, § 87(2)(b) was saying at this time.

Officers’ Bonner and Morgano transported § 87(2)(b) who “had been drinking,” to the Midtown South Precinct’s stationhouse. It was during this time that they learned that § 87(2)(b) is § 87(2)(b). Once at the stationhouse, PO Bonner spoke with both § 87(2)(b) and § 87(2)(b) explaining the nature of their arrest charges. PO Bonner was not present at the time when § 87(2)(b) and § 87(2)(b) were removed from their holding cells and transported to Central Booking. He stated that throughout his interaction with § 87(2)(b) he never heard him say that his handcuffs were too tight or that he had suffered injury to his wrists.

#### *Police Officer Dennis Morgano*

PO Dennis Morgano was working with PO Bonner (his steady partner) during the morning of July 26, 2003. He recalled the circumstances that prompted the canvass they conducted much like PO Bonner. PO Morgano described his initial interaction with § 87(2)(b) as follows: “as soon as I approached him, he looked at us, I could see that he was slightly intoxicated. I went to have a conversation with him and he immediately backed up and put his hands up like he wanted to fight – in a menacing manner. So I says, ‘put your hands down, we want to talk to you.’” PO Morgano stated that at this time he had already made the decision to arrest § 87(2)(b) based upon the female having identified him and because § 87(2)(b) “obviously didn’t want to cooperate.”

Together, PO Morgano and PO Bonner attempted to handcuff § 87(2)(b) – PO Morgano grabbed § 87(2)(b)’s right arm and PO Bonner his left as they attempted to place his hands behind his back. PO Morgano explained, “this person § 87(2)(b) is a large person, he’s very strong and when we went to grab a hold of his arm he pulled away and we were struggling to get a hold of him – he kept failing his arms around.” PO Bonner was eventually successful in handcuffing § 87(2)(b) who, at the time, was shouting, “you don’t know what you’re doing, you don’t know who I am, I know people – you’re losing your job!” § 87(2)(b)

§ 87(2)(b) The officer stated, “once he’s handcuffed he’s still trying to move around – trying to break free of us – and not going along with us.”

PO Bonner “walked” § 87(2)(b) near the officers’ car and placed a call for backup, a crowd had gathered in the area and additional cars were needed for transport. PO Morgano then handcuffed § 87(2)(b). After § 87(2)(b) was handcuffed, PO Morgano “gave him” to PO Bonner, who was standing alongside § 87(2)(b) at the RMP. PO Bonner secured both § 87(2)(b) and § 87(2)(b) (whom PO Morgano described as “standing steady”). PO Bonner was not holding either § 87(2)(b) or § 87(2)(b) by their handcuffs.

Regarding the arrest of § 87(2)(b) PO Morgano testified that “while” he was handcuffing § 87(2)(b) “this third individual (who was *highly* intoxicated), who later turned out to be § 87(2)(b) he interfered with me. He grabbed a hold of me when I was trying to arrest the second person. I had to push him away just so I could finish what I was doing because I was afraid I was going to lose possession of my prisoner or that someone else was going to get hurt.” Specifically, PO Morgano recalled § 87(2)(b) stating, “I’m a police officer, you can’t do that, you can’t just arrest somebody for nothing!” PO Morgano responded to § 87(2)(b) by suggesting, “if you’re a police officer – give me your hand, help me!” PO Morgano denied that § 87(2)(b) identified himself as a “peace officer.” After § 87(2)(b) was handcuffed, PO Morgano “went to grab hold of § 87(2)(b) who had remained in the immediate vicinity. PO Morgano described that § 87(2)(b) turned and started to flee. We both came down, tumbled to the ground, I tackled him from behind and fell on top of him: he basically broke my fall, as I fell on top of his legs. I said to him, ‘put your hands behind your back.’ He was fighting, too.” PO Morgano was able to handcuff § 87(2)(b) without assistance. PO Morgano stated that neither he nor § 87(2)(b) received injury as a result of this interaction.

Backup units, including PO Mark Grogan and Sgt. Joseph O’Connor, arrived at the location “after everything was over” – PO Grogan was responsible for transporting a portion of the prisoners. Once at Midtown South Precinct’s stationhouse, PO Morgano explained the arrest charges to his three prisoners and prepared their arrest paperwork. PO Morgano confirmed that he did not remove any of the prisoners’ handcuffs, did not hear any of the prisoners requesting that their handcuffs be removed, nor did he hear any of the prisoners state that they were injured. PO Morgano also asserted that during his continued conversations with both § 87(2)(b) and § 87(2)(b) neither of the males asserted that § 87(2)(b) had sustained injury. PO Morgano did not observe any injuries on § 87(2)(b).

#### *Police Officer Mark Grogan*

On July 26, 2003, PO Mark Grogan was working alongside fellow Midtown South Officer Steven Beatty and assigned to patrol the cabaret areas throughout the confines of the precinct between 11:15 PM and 7:50 AM. Officers’ Grogan and Beatty responded to a call for backup placed by Officers Bonner and Morgano; he estimated that “more than a dozen” officers (from both Midtown South and the 17<sup>th</sup> Precinct) responded. When PO Grogan approached Officers Bonner and Morgano they were standing with a “pretty muscular guy” and “having difficulty getting [this male into the car].” PO Morgano was standing “face-to-face with § 87(2)(b) at the passenger side of the car. PO Bonner and [PO Grogan] went around to the other (*driver’s*) side to pull the man in because he just stood up...wouldn’t come in to the car.” The officers eventually pulled § 87(2)(b) into the car by the “seat of [his] pants.” PO Grogan did not recall what, if anything, § 87(2)(b) was stating at this time.

PO Grogan did not have any interaction with § 87(2)(b) or § 87(2)(b) at the location. PO Grogan stated that a majority of the time that he spent at the location he was participating in crowd control. When asked if he transported any prisoners from the location to the Midtown South stationhouse, PO Grogan testified “I don’t have anything in my [memo] book about it. I believe I did, but I’m not too sure.”

Regarding whether § 87(2)(b) alleged to him that his handcuffs were too tight, PO Grogan stated that he did not recall § 87(2)(b) making such a comment. PO Grogan continued that he did not recall “any particular thing that § 87(2)(b) mentioned. Almost everybody [arrested] mentions that their handcuffs are too tight...they’re not meant for comfort. A lot of times, in my own personal experience and I’m not saying it happened here, if you don’t double-lock the cuffs and somebody sits back on them, they tighten up on themselves...just for a safety standpoint, once you have [your prisoner] in them, you’re not going to take them off until you’re back at the stationhouse, where you’re secure.”

#### *Sergeant John O’Connor*

On July 26, 2003, Sgt. John O’Connor was acting as a Patrol Supervisor alongside Officers Edward Eilenberger and Thomas Davis. Sgt. O’Connor testified that he did not respond to the intersection of 33<sup>rd</sup> Street and 3<sup>rd</sup> Avenue. Instead, at 2:30 AM (the approximate time of incident), Sgt. O’Connor responded to 39<sup>th</sup> Street between 5<sup>th</sup> and 6<sup>th</sup> Avenues where, by 2:45 AM, PO Eilenberger had made an arrest. Sgt. O’Connor did not recognize photographs of § 87(2)(b) and § 87(2)(b).

#### *Police Officer Robinson Vega*

On the date of incident, PO Robinson Vega, who is assigned to the Manhattan South Task Force, was present at the Midtown South Precinct’s stationhouse to lodge his prisoner at 3:00 AM. While PO



Vega confirmed that his name appears in the “member guarding” section of the Midtown South Precinct’s prisoner holding pen roster, he stated that at no time was he guarding the holding cell area. Instead, PO Vega explained that his name appears on the roster in reference to his having lodged his prisoner. When shown photographs of § 87(2)(b) and § 87(2)(b) PO Vega stated that none of the individuals looked familiar.

*Disposition of § 87(2)(b) and § 87(2)(b) s criminal charges.*

Both § 87(2)(b) and § 87(2)(b) were arrested for § 87(2)(b) on July 26, 2003 (see arrest reports, *enc. 25i-j and 25k-l* respectively). § 87(2)(b) was charged with § 87(2)(b) (enc. 25m-n). [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

*Disposition of § 87(2)(b) s IAB complaint*

§ 87(2)(b) filed an IAB complaint regarding the events of July 26, 2003 immediately prior to appearing at the CCRB to be interviewed. IAB did not investigate the complaint and instead referred that the single “unlawful arrest” allegation be investigated internally at the Midtown South Precinct. During a December 18, 2003 telephone conversation, Integrity Control Officer (ICO) Lt. John Dietz confirmed that his command only investigated the arrest allegation, which they exonerated. § 87(2)(g)

### Conclusions and Recommendations

While it was § 87(2)(b) who initiated this complaint, § 87(2)(b) and § 87(2)(b) each cooperated with this investigation and provided official statements regarding § 87(2)(b) s interaction with NYPD officers. When § 87(2)(b) was interviewed he alleged that he was the victim of excessive physical force at the time of his arrest, § 87(2)(g)

Both § 87(2)(b) and § 87(2)(b) s arrest charges (§ 87(2)(a) 160.50) have been dismissed. [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)], § 87(2)(g)

While neither the § 87(2)(b) family nor their legal counsel, § 87(2)(b), has explicitly confirmed their intent to file a civil suit regarding the injuries § 87(2)(b) suffered, there has been informal discussion that such measures will likely be taken once a disposition has been made regarding this CCRB investigation.

§ 87(2)(g)

§ 87(2)(g)

Allegation a: Police Officer Joseph Bonner used physical force against § 87(2)(b)

Allegation b: Police Officer Dennis Morgano used physical force against § 87(2)(b)

In his assessment of New York State search and seizure law, Barry Kamins cites *People v. Ladson*, a case that determined that the information provided by a civilian witness to a crime “may be sufficient to justify a stop and frisk of the suspect” (202 AD2d, 608 NYS2d 966 (1<sup>st</sup> Dept. 1994), *qtd. in* Kamins, pg. 174, *enc. 3j*). § 87(2)(g)

Kamins acknowledges that “the use of handcuffs during a temporary detention might be justified if the suspect attempts to flee or becomes violent.” However, he also cites the importance of an officer’s initial line of questioning and furthermore emphasizes that the “more force used [against a detained person], the

greater the chance a suspect would consider himself in custody.” § 87(2)(g)

§ 87(2)(b) and his friends stated that because the officers did not provide them with explanation, their interaction was highly confusing. § 87(2)(b) stated that absent any directives, as the officers approached he walked backwards and away from them, with his hands held up as if to display his innocence. Conversely, the officers described § 87(2)(b)'s behavior upon their approach as “menacing.” The officers detailed that, due to his size, § 87(2)(b)'s decision to walk away from them and raise his hands appeared similar to a “fighting-stance.” According to the officers, it was the threat that § 87(2)(b) might quickly become violent that prompted them to quickly (and forcibly) handcuff him.

§ 87(2)(g)

*Allegation c: Police Officer Joseph Bonner tightly handcuffed § 87(2)(b)*

§ 87(2)(b) reported that after he was handcuffed, the cuffs became tighter when PO Bonner “jerked up [while] violently pulling up and twisting” on the chain located between the cuffs. § 87(2)(b) too, described that while PO Bonner secured them, the officer was “holding [them] real tight [by the handcuffs], not letting [them] move or anything.” § 87(2)(b) stated that he observed PO Bonner “using excessive force by pulling and twisting § 87(2)(b)'s arm, to place [it] behind his back and force the handcuff on § 87(2)(b)'s wrist.” However, § 87(2)(b) was unable to comment on whether the officer used such described force after § 87(2)(b) was handcuffed. § 87(2)(b) was unable to provide witness testimony regarding § 87(2)(b)'s handcuffs.

PO Bonner denied having “jerked” or “twisted” § 87(2)(b)'s handcuffs. He testified that he escorted § 87(2)(b) by grabbing his arm (biceps area) and later secured him by placing him back-to-back with § 87(2)(b) leaning them against a nearby vehicle. PO Bonner explicitly denied having grabbed § 87(2)(b) by the chain of his handcuffs, and further explained that an officer's hand can easily pinch by grabbing the cuffs in such a manner. PO Bonner also described that § 87(2)(b) “wasn't happy” about having been arrested and remained resistant throughout their interaction, especially when he was attempting to load § 87(2)(b) into an RMP for transport. PO Morgano, too, described that § 87(2)(b) was demonstrating that he “did not want to stay” with the officers. Both officers explained that § 87(2)(b) was cited for resisting arrest as a result of such behavior.

§ 87(2)(b) suffered documented injury both to his wrists and (multiple) fingers. He reported to numerous doctors that the swelling and numbness was a result of “exquisitely tight” handcuffs (*enc. 23a-z*). The records from his orthopedic surgeon's office reiterated § 87(2)(b)'s assertion that during the incident, his cuffs were not loosened despite his having made multiple requests that they be loosened. § 87(2)(b) did not receive medical attention while in custody even though his “wrists were swollen to the size of his forearms” (*as § 87(2)(b) testified*). § 87(2)(b) explained that he refused medical attention because he “knew if [he] went to the hospital that [he] wouldn't get out [of custody].”

§ 87(2)(g)

§ 87(2)(b) and § 87(2)(b) all could not recall hearing § 87(2)(b) stating that his handcuffs were too tight, nor did any of these witnesses hear § 87(2)(b) ask an officer to loosen the cuffs. Likewise, both PO Bonner and PO Morgano did not recall § 87(2)(b) asserting that his handcuffs were too tight, and did not recall § 87(2)(b) asking for his handcuffs to be loosened. PO Grogan who (according to PO Bonner) transported § 87(2)(b) from the arrest location to the Midtown South Precinct's stationhouse, testified that he did not recall anything that § 87(2)(b) stated in his presence.



came down, tumbled to the ground, I tackled him from behind and fell on top of him: he basically broke my fall, as I fell on top of his legs. I said to him, ‘put your hands behind your back.’ He was fighting, too.”

§ 87(2)(g)

United States Penal Law 195.05. The law states that “a person is guilty of [OGA] when he intentionally obstructs, impairs...or prevents or attempts to prevent a public servant (*i.e. an NYPD officer*) from performing an official function (*i.e. an arrest*) by means of intimidation, physical force or interference” (*enc. 1d*). § 87(2)(g)

New York State Penal Law 35.30 (*enc. 1a-c*), which requires an officer to utilize the “minimal amount of force necessary” to affect an arrest.

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Investigator:

Date:

Supervisor:

Date:

Reviewed by:

Date:

Reviewed by:

Date: